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EXAMINER
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LAstra, DANIEL

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3688

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/071,442  
Filing Date: February 06, 2002  
Appellant(s): GAITHER, BLAINE D.

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Dan C. Hu  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 07/06/11 appealing from the Office action mailed 02/09/11.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 1-11,14,17-21,26-28 and 33-35 are rejected and pending in the application.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(6) Grounds of Rejection to be Reviewed on Appeal**

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

US 2002/0198929	JONES ET AL	12-2002
USP 7,430,459	PAPALIA ET AL	09-2008

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11,14,17-21,26-28 and 33-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The core of the invention is the agreement even though machines are used in the last step. The claim is very broad here about what the computers do under the agreement. "The machine is generically recited" since he is so broad in the claim about what the machine is and

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what it will do that it covers any and every machine capable of performing the claimed steps. The "general concept" factor that "the use of the concept, as expressed in the method, would effectively grant a monopoly over the concept" where the concept here is the contract. The last step, even though it uses the machine, only seems to merely fulfill the steps of the contract. For example, a claim reciting only a legal document (e.g., contract) per se does not appear to be a process, machine, manufacture, or composition of matter. In re Nuijten, Docket no. 2006-1371 (Fed. Cir. Sept. 20, 2007).

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-11, 14, 17-21, 26-28 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papalia (US 7,430,459) in view of Jones (US 2002/0198929).

Claim 1, Papalia teaches:

A method of utilizing a collective processing capability of a plurality of power machines after the power machines have been sold to purchasers by a vendor, the method comprising:

entering into a plurality of agreements, each of which is between the vendor and a different one of the purchasers, wherein the agreements specify that the vendor retains

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a right to use processing resources of the corresponding power machines after the sale of the computers (see col 5, lines 20-45); wherein for each of the computers, the vendor retains the right to use a portion of the processing resources of the corresponding power machines while a remaining portion of the processing resource of the corresponding power machines is for control by the respective purchaser of the corresponding computer (see col 5, lines 20-45); conveying, subject to the agreements, the plurality of the power machines to said purchasers (see col 5, lines 20-45); and using, according to the agreements, a network of the plurality of power machines to provide a service that provides the vendor with a commercial benefit, wherein using the network of the plurality of power machines to provide the service includes performing the service with the retained portion of the processing resources of the power machines (see col 5, lines 20-45; col 6, lines 27-45).

Papalia does not expressly mention that said power machines are computers. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to

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peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 2, Papalia teaches: wherein each one of said plurality of agreements is entered into prior to the sale of a respective said specific one of the computers (see col 8, lines 5-25).

Claim 3, Papalia teaches:

wherein each agreement provides a purchasing incentive to each of the purchasers (see col 6, lines 1-10).

Claim 4, Papalia does not teach:

wherein, in response to a query generated by a first one of the computers and received by a second one of the computers, using the processing resource of the second one of the computers to send data from the second one of the computers to the first one of the computers, wherein the processing resource of the second one of the computers used

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is the portion of the processing resource retained by a corresponding one of the agreements. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer

servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20). Claim 5, Papalia does not teach: wherein said data comprises an Internet web page. However, Jones teaches a system where a master server divides a large file into several small pieces



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and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 6, Papalia teaches:

A method of utilizing a collective processing capability of a plurality of power machines after the power machines have been sold to purchasers by a vendor, the method comprising:

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entering into a plurality of agreements, each of which is between the vendor and a different one of the purchasers, wherein the agreements specify that the vendor retains a right to use processing resources of the corresponding power machines after the sale of the power machines (see col 5, lines 20-45); for each of the power machines, the vendor retains the right to use a portion of the processing resource of the corresponding power machines while a remaining portion of the processing resource of the corresponding power machines is for control by the respective purchaser of the corresponding power machines, wherein entering into the plurality of agreements further comprises entering into the plurality of agreements to retain a right to use storage areas in the respective power machines (see col 5, lines 20-45);

conveying, subject to said agreements, the plurality of the power machines to said purchasers (see col 5, lines 20-45); and using a network of the plurality of power machines to provide a service that provides the vendor with a commercial benefit (see col 6, lines 27-65), (see col 5, lines 20-45),

wherein the network comprises a plurality of nodes including the power machines,

and a vendor computer node,:

the vendor computer node maintaining a list of all of the power machines connected thereto (see col 6, lines 27-65) but does not expressly teach along with respective IP

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addresses for the corresponding computers, and information identifying files stored in the respective retained storage areas of the corresponding computers; and in response to a query for a requested file, the vendor computer node accessing the list to identify one or more of the computers storing the requested file to enable retrieval of the requested file in response to the query. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in

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each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

claims 7, 18 Papalia does not teach:

wherein the network comprises a plurality of peers, each of which includes a corresponding one of the computers, the method further comprising:

configuring each of the peers in the network as a servent that acts as both a client and a server to distribute data between the peers in response to a query generated by one of the peers. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a

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plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 8, Papalia does not teach:

distributing said query between successive said peers until the query is received by one of the peers having access to said data; and distributing said data between successive said peers until the data is received by said one of the peers that generated the query. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4,

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lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

Claim 9, Papalia teaches: wherein said network includes said power machines used by entities not in privity with the vendor (see col 5, lines 20-45). Papalia does not expressly teach that said power machines are computers. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 9.

Claims 10, 19 Papalia does not teach:

Wherein retaining the right to use said processing resources comprises retaining the right to use low-priority processor cycles of the corresponding computers to effect said service. However, Jones teaches a system where client computers share their computer resources such as CPU limits, memory limits with a master server in order to help said master server offload demands from their master Internet server (see paragraphs 30-31). Therefore, the same argument made in claim 1 regarding this missing limitation is also made in claims 10, 19.

Claims 11, 20, Papalia does not teach:

Wherein retaining the

right to use said processing resources comprises retaining the right to use a predetermined amount of

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processor time within a fixed interval of time in each of the computers to effect said service. However, Jones teaches a system where client computers share their computer resources such as CPU limits, memory limits with a master server in order to help said master server offload demands from their master Internet server (see paragraphs 30-31). Therefore, the same argument made in claim 1 regarding this missing limitation is also made in claims 11, 20.

Claims 14, 21, Papalia teaches:

A method of utilizing a collective processing capability of a plurality of devices containing embedded processors, after the devices have been sold to purchasers by a vendor, the method comprising: entering into an agreement between the vendor and a respective one of the purchasers wherein, with respect to a specific one of the devices to be sold to said respective one of the purchasers, the vendor retains a right to use a portion of the embedded processor of said specific device after the sale thereof (see col 5, lines 20- 45); while a remaining portion of the embedded processor of said specific device is for control by said respective one of the purchasers conveying the specific device to said respective one of the purchasers, after entering into said agreement (see col 5, lines 20-45); and using the network to provide a service that provides the vendor with a commercial benefit, wherein providing the service includes performing the service with the retained portions of the embedded processors of the devices in the network (see col 6, lines 27-55). Papalia does not teach repeating the previous two steps until a predetermined

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minimum number of the devices that are connectable to a network have been sold. However, Jones teaches that it is old and well known in the communication art to determine a predetermined minimum number of computers to create a share network (see paragraph 6). Jones also teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where subsequent requests from new client machines are then redirected by the master server to the clients which already have the required file pieces (see paragraph 6). Therefore, the same argument made in claim 1 regarding this missing limitation is also made in claims 14, 21-22.

Claim 17, Papalia teaches:

Wherein entering into the agreements further comprises entering into the agreements to retain a right to use storage areas of the devices, wherein the network comprises a plurality of nodes including the devices, and a vendor computer node (see col 5, lines 20-45; col 6, lines 27-65), the method further comprising:

the vendor computer node maintaining a list of all of the devices connected thereto (see col 6, lines 27-65),

Papalia does not teach along with respective IP addresses for the corresponding devices, and information identifying files stored in the respective retained storage areas of the corresponding devices; and in response to a query for a requested file, the vendor computer node accessing the list to identify one or more of the devices storing



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the requested file to enable retrieval of the requested file in response to the query. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20). Claim 26, Papalia teaches: wherein entering into the plurality of agreements further comprises entering into the plurality of

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agreements to retain a right to use secure storage areas in the computers to store data of the vendor (see col 5, lines 20-65).

Claim 27, Papalia does not teach:

wherein retaining the right to use the secure storage areas comprises retaining the right to use virtual environments in the computers for storing the vendor data. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 27.

Claim 28, Papalia teaches: wherein entering into the plurality of agreements further comprises entering into the plurality of agreements to run software of the vendor using the retained processing resources of the power machines, the method further comprising: receiving a request from a requestor for the service, wherein the requestor is the vendor or a third party different from the vendor and the purchasers; and running the software on at least one of the power machines in response to the request (see col 6, lines 10-20 "diagnostics"). Papalia does not teach that said power machines are computers. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 28. Claim 33, Papalia teaches: wherein employing the retained portion of the processing resources of the computers is to perform the service in response to a request of the vendor or a third party different from the vendor and the purchasers (see col 8, lines 5-25).

Claim 34, Papalia teaches:

Wherein	employing	the
retained	portions	of

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the embedded processors of the devices is to perform the service in response to a request of the vendor or a third party different from the vendor and the purchasers (see col 5, lines 20-45).

Claim 35, Papalia does not teach:

Wherein the agreements further specify that the vendor has retained a right to use storage areas of the plurality of power machines, the method further comprising: a computer node associated with the vendor receiving a query for requested data; the computer node responding to the query by accessing information to determine which one or more of the computers in the network contains the requested data in respective one or more retained storage areas; and the computer node providing information to allow retrieval of the requested data. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught

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by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

#### **(10) Response to Argument**

The Appellant argues in pages 9-12 that there is no hint given in Papalia of entering into agreements that specify that the vendor retains a right to use processing resources of the corresponding computers after the sale of the computers, where for each of the computers, the vendor retains the right to use a portion of the processing resource of the corresponding computer while a remaining portion of the processing resource of the corresponding computer is for control by the respective purchaser of the corresponding computer. The Examiner answers that Papalia does not expressly mentioned that said power machines are computers. However, Jones teaches a system where a master server divides a large file into several small pieces and then downloads those file pieces to client machines, where these client machines function as peer to peer servers and where said master server keeps track of where said file pieces are located using TCP/IP suite of protocols (see paragraphs 6, 17). Therefore, it would have

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been obvious to a person of ordinary skill in the art at the time the application was made, to know that Papalia would modify his invention to provide customers with free computers instead of power machines where a vendor master server would divide a large file into several small pieces and then downloads those file pieces to said computers, where these computers would function as peer to peer servers and where said master server would keep track of where said file pieces are located using TCP/IP suite of protocol, as taught by Jones in view that Papalia teaches that said power machines includes microcontrollers that are connected to a central server via a computer network, where said central server controls the operation of said power machines via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20).

The Appellant argues in page 12-18 of the Brief that there is no hint in the prior arts of entering into agreements that specify that the vendor retains a right to use processing resources of the corresponding computers after the sale of the computers in order to retain the right to use storage areas, embedded processor, secure storage areas, virtual environment in respective computers. The Examiner answers that Papalia teaches that a vendor offers customers power machines free of charge (see col 5, lines 20-30) so said vendor retains the right to control the operation of said power machines

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via a modem (see Papalia col 3, lines 30-40; col 4, lines 38-65; col 6, lines 27-55) and where said power machines creates a plurality of nodes in a computer network (see Papalia col 6, lines 27-46) and further in view that Papalia teaches that a central server runs diagnostics in each power machines connected to the network and knows which of said machines in said network are in need of attention (see Papalia col 6, lines 10-20). Therefore, contrary to Appellant's argument, the prior arts teach Appellant's claimed invention.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/DANIEL LASTRA/  
Primary Examiner, Art Unit 3688  
October 18, 2011

Conferees:

John Weiss

/JOHN G. WEISS/

Supervisory Patent Examiner, Art Unit 3688

/Vincent Millin/

Appeals Practice Specialist